Liability Act. *Behrens* v. *Illinois Central R. Co.*, 192 Fed. 581 (Dist. Ct., E. D. La.).

The court feels that the fact that the usual and ordinary employment of the decedent included interstate commerce gave him a status of one engaged in interstate commerce and so kept him continuously under the protection of the federal act. Another court has said, however, that an employee might well be subject to the act while engaged in interstate but not while engaged in intrastate commerce. See *Colasurdo* v. *Central R. of New Jersey*, 180 Fed. 832, 837. The few cases under the act seem to rest its applicability upon the character of the work in which the employee was engaged when injured. *Zikos* v. *Oregon R. & Navigation Co.*, 179 Fed. 893; *Taylor* v. *Southern Ry. Co.*, 178 Fed. 380. The recent decision of the Supreme Court, in holding that it is not essential that the train doing the injury should be interstate, seems to look merely to the work of the injured employee. *Second Employers' Liability Cases*, 32 Sup. Ct. 169. The Act of 1906 was declared unconstitutional because it applied to intrastate employees. *Employers' Liability Cases*, 207 U. S. 463, 28 Sup. Ct. 141. The construction maintained in the principal case would bring the scope of the present act extremely close to that of its predecessor.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — INTRASTATE JUNCTION RAILWAY HANDLING CARS FOR INTERSTATE SHIPMENT. — A short railway, wholly within a state, switched with its own motive power on through bills of lading interstate carload freight from one trunk line to another, and from the trunk lines to the consignee's sidings. The trunk lines paid the railway by the car. *Held*, that the railway is subject to the provisions of the Interstate Commerce Act. *United States ex rel. Attorney General* v. *Union Stockyard & Transit Co.*, 192 Fed. 330 (Commerce Ct.).

A shipment is interstate if the shipper intends a single consignment from one state to another. *Cutting* v. *Florida Ry. & Navigation Co.*, 46 Fed. 641. See 20 HARV. L. REV. 652. That one of the connecting carriers participating is wholly within one state does not relieve it from interstate obligations. *The Daniel Ball*, 10 Wall. (U. S.) 557; *Norfolk and Western R. Co.* v. *Pennsylvania*, 136 U. S. 114, 10 Sup. Ct. 958. This is true even though local bills of lading are issued for the shipment. *Houston Direct Navigation Co.* v. *Ins. Co. of North America*, 89 Tex. 1, 32 S. W. 889; *Texas & Pacific Ry. Co.* v. *Railroad Commission of Louisiana*, 183 Fed. 1005. But *cf. United States ex rel. Interstate Commerce Commission* v. *Chicago, etc. R. Co.*, 81 Fed. 783. Intrastate terminal companies handling interstate trains are within the act. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 31 Sup. Ct. 279. Upon facts substantially similar to those in the principal case the federal Safety Appliance Act has been held applicable. *Union Stock Yards Co.* v. *United States*, 169 Fed. 404; *Belt Ry. Co.* v. *United States*, 168 Fed. 542. It has been suggested that that act is to be construed more broadly, because it regulates, not business, but mechanical instrumentalities with a view to the safety of workmen. See *United States* v. *Colorado & N. W. R. Co.*, 157 Fed. 321, 330. And before the amendment of 1906 the Commerce Act was thought to apply to a railroad within a state only when it handled interstate shipments under a common arrangement for continuous carriage. *United States* v. *Geddes*, 131 Fed. 452; *Cincinnati, etc. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 16 Sup. Ct. 700. The amendment makes the two acts define interstate railroads in the same terms. The principal case gives them a similar scope.

PARTNERSHIP — RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS INTER SE — RIGHT OF PARTNER TO MAINTAIN TROVER FOR UNAUTHORIZED SALE

OF PARTNERSHIP PROPERTY. — A. and B. were co-partners. B., without the knowledge, consent, or authority of A., sold all the partnership property to C. *Held*, that A. may maintain trover against B. and C. *Weiss* v. *Weiss*, 133 N. Y. Supp. 1021 (Sup. Ct.)

One tenant in common cannot generally sue his co-tenant in trover for withholding use of the common property, since each has a right to possession. *Bohlen* v. *Arthurs*, 115 U. S. 482, 6 Sup. Ct. 114. See *Brown* v. *Hedges*, 1 Salk. 290. For a destruction of the chattel trover lies. *Herrin* v. *Eaton*, 13 Me. 193. In this country, the action is usually allowed even in the case of a sale by a co-tenant. *White* v. *Osborne*, 21 Wend. (N. Y.) 72; *Goell* v. *Morse*, 126 Mass. 480. But see *Mayhew* v. *Herrick*, 7 C. B. 229, 246. Whether the purchaser from the co-tenant is liable in trover is a question which has produced a conflict, but on principle it seems that each has been guilty of conversion in assuming to own the chattel and to deal with it as his own. *Weld* v. *Oliver*, 38 Mass. 559. *Contra*, *Osborne* v. *Schenck*, 83 N. Y. 201. Co-tenants, however, have no authority to sell the common property, whereas each partner may sell all the firm assets. See *Wilson* v. *Reed*, 3 Johns. (N. Y.) 175, 179; *Mabbett* v. *White*, 12 N. Y. 442. On this ground courts have held that one partner cannot sue another in trover for a sale of firm property. *Montjoys* v. *Holden*, Litt. Sel. Cas. (Ky.) 447; *Mason* v. *Tipton*, 4 Cal. 276. This reasoning seems insufficient, since the authority, as between the partners, is to sell only for partnership purposes. But the wrong is to the partnership. *Homer* v. *Wood*, 11 Cush. (Mass.) 62. Trover may prove inadequate, as there is no assurance that the fraudulent partner is not owed more by the firm than the damages from the wrong. See *Sweet* v. *Morrison*, 103 N. Y. 235, 241, 8 N. E. 396, 398. These rights can be adjusted satisfactorily only by an accounting in equity. See PARSONS, PARTNERSHIP, 4 ed., 304.

POWERS — INTENTION TO EXECUTE SPECIAL POWER. — The testatrix had a testamentary power of appointment among her children. By her will she gave, devised, bequeathed, and appointed her residuary real and personal estate (including all property over which she had a power of appointment) to trustees to pay debts and stand possessed of the residue in trust for her husband for life and then for her children equally. *Held*, that the power is not exercised by the will. *Re Sanderson*, 106 L. T. 26 (Eng., Ch. D., Feb. 9, 1912).

In order to exercise a testamentary power a will must, at common law, contain a sufficient reference to the power to show an intention to exercise it. The use of the verb "appoint," especially when coupled with the express inclusion, in a general gift, of "all property over which I have a power of appointment," would undoubtedly be a sufficient reference in the case of a general power. See *In re Richardson's Trusts*, L. R. 17 Ir. 436, 443. Such words also show an intention to execute a special power. *In re Mayhew*, [1901] 1 Ch. 677. But other parts of the will may tend to negative this intention. Thus putting the appointed property in a common fund with other property and providing for its conversion is not consistent with an intention to execute a special power. *In re Weston's Settlement*, [1906] 2 Ch. 620. So also if the gift is to others as well as to the objects of the power, or provides for payment of debts. *Ames* v. *Cadogan*, 12 Ch. D. 868. The English judges have differed as to whether these considerations outweigh the effect of the word "appoint." *In re Swinburne*, 27 Ch. D. 696; *In re Cotten*, 40 Ch. D. 41. The present case is one of the strictest.

RAILROADS — LIABILITY OF LESSOR RAILROAD FOR UNREASONABLE DISCRIMINATION BY LESSEE. — In an action of trespass for unreasonable discrimination in not granting the plaintiff siding facilities, the defendant corporation pleaded that prior to the alleged discrimination it had turned the entire management and control of its railroad over to another corporation